



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2014-0531]

RIN 1625-AA00

Safety Zone, Lower Mississippi River Mile 94.0 to Mile 95.0; New Orleans, LA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

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SUMMARY: The Coast Guard is establishing a temporary safety zone for all waters of the Lower Mississippi River from mile marker 94.0 to mile marker 95.0 above head of passes (AHP). This safety zone is necessary to protect persons and vessels from potential safety hazards associated with a barge based fireworks display in the Lower Mississippi River at mile marker 94.4 AHP. Entry into this zone is prohibited unless specifically authorized by the Captain of the Port (COTP) New Orleans or a designated representative.

DATES: This rule is effective from 8:15 p.m. to 9:00 p.m. on September 13, 2014.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG-2014-0531]. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Lieutenant Commander (LCDR) James Gatz, Sector New Orleans, at (504) 365-2281 or [James.C.Gatz@uscg.mil](mailto:James.C.Gatz@uscg.mil). If you have questions on viewing or submitting material to the docket, call Cheryl F. Collins, Program Manager, Docket Operations, telephone (202) 366-9826.

#### SUPPLEMENTARY INFORMATION:

##### Table of Acronyms

AHP	Above Head of Passes
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	Federal Register
MM	Mile Marker
NPRM	Notice of Proposed Rulemaking

## A. Regulatory History and Information

The Coast Guard is issuing this final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(3)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable and unnecessary. The Coast Guard received information about this fireworks display on or about July 25, 2014. As scheduled, the display would take place before the full NPRM process could be completed. Because of the dangers presented by an aerial barge based fireworks display taking place on and over the waterway, it is in the public interest to establish this safety zone to protect transiting vessels and mariners. Completing the full NPRM process would delay the establishment of this safety zone, which is necessary to protect life and property from the possible dangers and hazards associated with a nighttime waterway based fireworks display. Delay would also unnecessarily interfere with possible contractual obligations. While it is in the public's best interest to provide this safety measure, the impacts on

navigation are expected to be minimal as the safety zone will only be in effect for a short duration.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. Providing a full 30 days notice is contrary to the public interest as it would delay the effectiveness of the safety zone until after the planned fireworks event. Immediate action is needed to protect vessels and mariners from the safety hazards associated with an aerial fireworks display over a waterway. The Coast Guard will notify the public and maritime community that the safety zone will be in effect and of its enforcement periods via broadcast notices to mariners.

#### B. Basis and Purpose

Pyrotecnico, a company specializing in fireworks displays, informed the Coast Guard of a fireworks display sponsored by Malena Badon and planned for September 13, 2014. The fireworks will be launched from a barge located at MM 94.4 AHP on the Lower Mississippi River. This display will take place between 8:15 p.m. and 9:00 p.m. on September 13, 2014 in a high commercial traffic area near a tight river bend. Therefore, the Coast Guard has determined that a safety zone is needed to ensure safe navigation for all those in the vicinity of the fireworks display. This safety zone is established to protect the public,

mariners, and vessels from the hazards associated with a barge based fireworks display on and over the waterway.

The legal basis and authorities for this rule are found in 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to establish and define regulatory safety zones.

#### C. Discussion of the Final Rule

The Coast Guard is establishing a temporary safety zone on the Lower Mississippi River from 8:15 p.m. to 9:00 p.m. on September 13, 2014. The safety zone will include the entire width of the Lower Mississippi River in New Orleans, LA, from MM 94.0 to MM 95.0 AHP. Entry into this zone is prohibited unless permission has been granted by the COTP New Orleans, or a designated representative.

The COTP New Orleans will inform the public through broadcast notices to mariners of the enforcement period for the safety zone as well as any changes in the planned schedule. Mariners and other members of the public may also contact Coast Guard Sector New Orleans Command Center to inquire about the status of the safety zone, at (504) 365-2200.

#### D. Regulatory Analyses

We developed this rule after considering numerous statutes

and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

#### 1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. This safety zone will restrict navigation on the Lower Mississippi River from MM 94.0 to MM 95.0 AHP, for approximately forty-five minutes on September 13, 2014. Due to the limited scope and short duration of the safety zone, the impacts on routine navigation are expected to be minimal.

#### 2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. This rule will affect the following entities, some of which may

be small entities: the owners or operators of vessels intending to transit the Lower Mississippi River from MM 94.0 to MM 95.0 AHP between 8:15 and 9:00 p.m. on September 13, 2014. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities because it is limited in scope and will only be in effect for approximately forty-five minutes on one day. Before enforcement, COTP New Orleans will issue maritime advisories widely available to users of the river and will make notifications to the public through marine band radio when the safety zone is being enforced. Additionally, deviation from this rule may be requested and will be considered on a case-by-case basis by COTP New Orleans or a COTP New Orleans designated representative.

### 3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with,

Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### 4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### 5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

#### 6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate



protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### 7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### 8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### 9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### 10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety

Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

#### 11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### 12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

#### 13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### 14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one of a category

of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves establishing a temporary safety zone for all waters of the Lower Mississippi River from MM 94.0 to MM 95.0 AHP. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

#### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record-keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

#### PART 165-REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04.6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. A new temporary § 165.T08-0531 is added to read as follows:

§ 165.T08-0531 Safety Zone, Mississippi River Mile 94 - Mile 95; New Orleans, LA.

(a) Location. The following area is a safety zone: All waters of the Lower Mississippi River from mile marker 94.0 to mile marker 95.0 above head of passes, New Orleans, LA.

(b) Effective Date and Enforcement Period. This rule is effective on September 13, 2014. The safety zone will be enforced from 8:15 p.m. until 9:00 p.m. on September 13, 2014.

(c) Regulations.

(1) In accordance with the general regulations in §165.23 of this part, entry into this zone is prohibited unless specifically authorized by the Captain of the Port (COTP) New Orleans or designated personnel. Designated personnel include commissioned, warrant and petty officers of the U.S. Coast Guard assigned to units under the operational control of USCG Sector New Orleans.

(2) Vessels requiring deviation from this rule must request permission from the COTP New Orleans or a COTP New Orleans designated representative. They may be contacted on VHF-FM Channel 16 or 67, or through Coast Guard Sector New Orleans at 504-365-2200.

(3) Persons and vessels permitted to deviate from this safety zone regulation and enter the restricted area must transit at the

slowest safe speed and comply with all lawful directions issued by the COTP New Orleans or designated representative.

(d) Information Broadcasts. The COTP New Orleans or a COTP New Orleans designated representative will inform the public through broadcast notices to mariners of the enforcement period for the safety zone as well as any changes in the planned schedule.

Dated: August 13, 2014

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P. C. Schifflin,  
Captain, U.S. Coast Guard,  
Captain of the Port New Orleans.

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Date: 08/29/2014]